

[4830-01-p]

Published July 1, 2005

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

REG-142686-01

RIN-1545-BE60

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and Collection of Income Tax at Source to incentive stock options and options granted under employee stock purchase plans (collectively referred to as “statutory stock options”) that was published on November 14, 2001. This withdrawal affects employers that grant these options and employees who exercise these options .

FOR FURTHER INFORMATION CONTACT: Paul J. Carlino or Michael Swim, 202-622-0047 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2001, the IRS and Treasury published proposed amendments to 26 CFR Part 31 under sections 3121(a), 3306(b), and 3401(a) of the Internal Revenue Code (Code), and to 26 CFR Part 1 under section 424 of

the Code, that would address the application of the FICA, FUTA, and Collection of Income Tax at Source to statutory stock options. These proposed amendments to the regulations were published in the **Federal Register** (66 FR 57023).

The American Jobs Creation Act of 2004 (the AJCA), H.R. 4520, Public Law 108-357 (118 Stat. 1418), was enacted on October 22, 2004. Section 251 of the AJCA amended sections 3121(a) and 3306(b) of the Code to exclude remuneration on account of a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or any disposition by the individual of such stock, from the definition of wages for FICA and FUTA tax purposes, respectively. Section 251 of the AJCA also amended sections 421(b) and 423(c) of the Code so that no amount shall be required to be deducted and withheld under the Collection of Income Tax at Source provisions of the Code with respect to any amount treated as compensation under section 421(b) or 423(c), respectively. Because the proposed amendments to the regulations are no longer consistent with the statutes, the IRS and Treasury are withdrawing the proposed amendments to the regulations.

The statutory amendments made by section 251 of the AJCA apply to stock acquired pursuant to statutory stock options exercised after October 22, 2004. For guidance applying to stock acquired pursuant to statutory stock options exercised on or before October 22, 2004, see Notice 2002-47 (2002-2 C.B. 97).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-142686-01) that was published in the **Federal Register** on November 14, 2001 (66 FR 57023) is withdrawn.

Deputy Commissioner for Services and Enforcement